Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1811

JOHN DOE, et al.,
Petitioners,

-vs-

CATHY E. IRWIN, et al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	1
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
I. THE DECISION BELOW SERIOUSLY CONFLICTS WITH AND IMPAIRS THE DECISIONS OF THIS COURT PROTECTING THE RIGHTS OF PARENTS TO THE CARE, CUSTODY AND NURTURE OF THEIR CHILDREN FROM INTRUSION BY THE STATE	6
II. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING THE RIGHTS OF PARENTS TO BE INFORMED OF ACTIONS AFFECTING THE HEALTH AND UPBRINGING OF THEIR CHILDREN AND WIDESPREAD DEBATE OF THIS ISSUE REQUIRES THIS COURT'S RESOLUTION OF THE MATTER FOR THE PRESERVATION OF FAMILY RIGHTS	12
CONCLUSION	14
APPENDIX	
APPENDIX A—OPINION OF COURT OF APPEALS	1a
APPENDIX B—PERTINENT CONSTITUTIONAL PROVISIONS	16a
APPENDIX C—EXCERPTS FROM DEPOSITION OF MARIANNE DAVIS	17a
APPENDIX D—EXCERPTS FROM DEPOSITION OF GERALD HOLZMAN, M.D.	24a

CITATIONS

Decisions Cited: Page

Bellotti v *Baird*, 428 U.S. 132 (1976) 12

Bellotti v *Baird*, 99 S. Ct. 3035 (1979).....11, 12, 13

Carey v *Population Services International*, 431 U.S. 678 (1977) 4, 14

Engel v *Vitale*, 370 U.S. 421 (1962) 10

Griswold v *Connecticut*, 381 U.S. 479 (1965)..... 10

H L v *Matheson*, 79-5903, Utah , (Utah Sup. Ct. 12/6/79), prob. juris. noted, 2/25/80, Review granted 48 LW 3574 14

Frederick Kaneshiro, et al v *George Yuen, et al*, Civil Case No. 78-0023, USDC, District of Hawaii 13

Meyer v *Nebraska*, 262 U.S. 390 (1923) 6, 10, 11

Parham v *J.R.*, 99 S. Ct. 2504 (1979) 13

Pierce v *Society of Sisters*, 268 U.S. 510 (1925) 6, 10, 11

Planned Parenthood of Missouri v *Danforth*, 428 U.S. 52 (1976) 12

Prince v *Massachusetts*, 321 U.S. 158 (1944) ...6, 10, 11

Snyder v *Massachusetts*, 291 U.S. 97 (1933) 10

Tenland, et al v *Planned Parenthood Association of Cincinnati, Inc., et al*, Civil Case No. 1-78-755, U.S.D.C. Sd. Ohio, Western Division 13

Wisconsin v *Yoder*, 406 U.S. 205 (1972) 6-11

Constitutional Provisions:

Religion clauses, First Amendment ..... *passim*

Ninth Amendment ..... *passim*

Due Process and Equal Protection clauses, Fourteenth Amendment ..... *passim*

Court Rule: Page

Supreme Court Rule 19.1(b) 14

Miscellaneous

Caplow, "The Loco Parent: Policy and Family Life", 1976, *B.Y.U.L. Rev.* 709 13

Hafen, "Children's Liberation and the New Equalitarianism: Some Reservations About Abandoning Youth to Their 'Rights' ", *B.Y.U.L. Rev.* 604 (1976) 13

Hafen, "Puberty, Privacy and Protection: The Risks of Children's 'Rights' ", 63 *ABA Journal* 1383 (Oct. 1977) 13

J. Holt, *Escape from Childhood* 1974 13

K. Kenmoton, All Our Children, (Carnegie Council on Children) (1977) 13

"Medical Care for the Child at Risk: On State Supervention of Parental Autonomy", J. Goldstein, 86 *Yale L. Journal*, 645 (1977) 13

R. Mnookin, "Children's Rights: Legal and Ethical Dilemmas", *The Transcript*, Summer, 1978 (Boult Hall—Univ. of California at Berkeley) 13

"Parental Consent Requirement and Privacy Rights of Minors: The Contraceptive Controversy", 88 *Harv. L. Rev.* 1001 (1975) 13

P. Wald, "Making Sense out of the Rights of Youth", 4 *Human Rights* 13 (1974) 13

W. Watts, "Parent, Child and the Decision to Abort: A Critique of the Supreme Court's Statutory Proposal in *Bellotti* v *Baird*, 52 *So. Cal. L. Rev.* 1869 (Sept. 1979) 13

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners, JOHN DOE, JANE DOE, THOMAS M. GROST and CORA W. GROST, individually and on behalf of all others similarly situated, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 26, 1980.

OPINIONS BELOW

The Opinion of the Court of Appeals, not yet reported, is set forth in Appendix A hereto. That Opinion reversed Judgments of the District Court of the Western District of Michigan reported at 428 F. Supp. 1198 (W.D. Mich. 1977) and at 441 F. Supp. 1247 (1977).

JURISDICTION

The Judgment of the Court of Appeals for the Sixth Circuit was entered on February 26, 1980. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

In this action parents of minor unemancipated children sought injunctive relief against a county public health clinic program providing contraceptives to minors in conjunction with an educational "rap session". The clinic requires minors to attend this "rap session" as a prerequisite to receipt of contraceptives. The religious attitudes and values of parents and minors towards premarital sex and the use of contraceptives, the morality of the lifestyle of sexually active unmarried teenagers and their scruples about such matters as derived from their family are examined and evaluated by respondent state public officials and discussed with minor children at rap sessions. Those sessions are

designed to influence immature minor children to use hazardous prescriptive contraceptive drugs contrary to the religious beliefs of parents and their children. Under clinic guidelines, parents are not notified that their minor children attend these sessions nor that dangerous prescriptive drug contraceptives are provided to them by the public health clinic. The questions presented therefore are:

1. Whether the public clinic's educational program evaluating the religious and moral beliefs of parents and their minor children in order to affect the minor's attitude toward the use of contraceptives violates fundamental rights under the Religion Clauses of the First Amendment and the familial privacy rights protected by the Ninth Amendment?

2. Whether the public clinic's provision of contraceptives of any type to minors not determined to be mature or capable of informed consent, without notice or consultation with their parents, violates the fundamental rights of parents to the care, custody and nurture of their children and their right, as parents, to inculcate in their own children moral standards, religious beliefs and elements of good citizenship as protected by the First and Fourteenth Amendment?

3. Whether the public clinic's provision of hazardous, prescriptive birth control drugs to minors without notice or consultation with their parents violates the fundamental rights of parents to the care, custody and nurture of their children protected by the Fourteenth Amendment?

4. Whether the limiting of birth control devices and medications by the public clinic to those minors only who consent to attend a clinic educational session in which respondent state officials and their agents examine and evaluate the religious and moral beliefs of parents and their minor children towards engaging in premarital sexual intercourse by minors and the use of

dangerous contraceptive drugs by their minor children without the knowledge of the parents violates fundamental Fourteenth Amendment Equal Protection and Free Exercise First Amendment rights of parents and their minor children?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the Religion Clauses of the First Amendment and the Ninth Amendment, as set forth in Appendix B.

STATEMENT OF THE CASE

(References are to Record below unless Appendix is indicated)

Without notice to her parents, Plaintiff's 16 year old unemancipated daughter was provided contraceptives, including dangerous prescriptive, contraceptive drugs without the advice or consent of a physician, after attending an educational session provided by the Ingham County (Michigan) public health clinic. This "rap session" examined and evaluated the religious beliefs and attitudes of parents and minor children concerning a minor's participation in sexual intercourse before marriage and her use of contraceptives. (Stip. 3,10,20, pp. 74-76) In the class action suit subsequently brought by Plaintiff parents founding jurisdiction under 42 USC §1983 and seeking injunctive relief against continuation of the program without parental participation, the complaint named as defendants county public health board members and clinic staff personnel in their official capacities. (Complaint p. 1-6)

On March 7, 1977, the District Court issued a permanent injunction ordering the defendants and those acting under them to stop providing contraceptives to minors without notice to their parents granting them a reasonable

opportunity to consult with their children. *Doe* v *Irwin*, 428 F. Supp. 1198 (W.D. Mich 1977) On remand of Defendants' appeal to the Sixth Circuit Court of Appeals for consideration of *Carey* v *Population Services, International*, 431 US 678 (1977), the District Court re-affirmed the previous injunctive order. 441 F. Supp 1247 (1977) The Court of Appeals' decision filed on February 26, 1980, reversed the District Court Judgment with direction to dismiss the complaint.

Most facts concerning the operation of defendant public health clinic were stipulated or undisputed. It is undisputed that unemancipated minors of any age are provided contraceptives by the clinic. (App. 1a; App. 25a) No determination is made or required of the minor's maturity. (App. 22a; App. 25a,) The clinic requires every minor provided contraceptives to participate in a 2-1/2 hour educational session (known as a "rap session"). The rap session is a group dynamics discussion led by a specially trained social worker and assisted by medical and social work students. (94,139) While this session covers the subjects of birth control and human reproduction broadly, no dispute exists that the state clinic personnel purposely examine and evaluate religious beliefs and attitudes of parents and their minor children towards their children's sexual activity and their use of contraceptives. (App. 18a,19a) The morality of the life style of unmarried teenagers engaging in sexual activity and their value systems are discussed. (App. 21a) The social worker does deal with the question of those teenagers who, from family background, have scruples about being sexually active and are looking for counsel as to how to resolve these problems. (App. 21a)

While the clinic asserts that parental participation in the clinic program is welcome and encouraged and the Court of Appeals so found (Slip Opinion at 13, App. 13a) the record does *not* support this finding. The clinic does not notify parents of the participation of their children, no matter how young, in the value education it provides concerning sexual activity and the use of contraceptives (105) nor does it

notify parents that it is providing dangerous prescriptive drug contraceptives to their unemancipated children. (114) Further, the clinic does not inquire of the minors whether their parents are aware of their attendance at clinic rap sessions or of their use of contraceptives provided by the clinic. (App. 20a) In fact, of course, this very litigation establishes the lengths to which the clinic will go rather than notify parents and facilitate their participation in their children's care and education.

Before receiving contraceptives, female minors are given a physical examination by a nurse. (152) A medical history of the minor is taken from the minor herself. (126) The nurse generally then prescribes the contraceptives unless the *nurse* determines that medical contraindications exist which dictate that the minor be seen by a physician. (152, 153) Physicians do not see every minor and do not often establish physician-patient relationships. (152 App. 24a)* Minors receive the birth control pill as the most popular contraceptive furnished by the clinic. (91) It is now medically recognized that use of birth control drugs present extremely serious physical and mental risks to patients. (154, 281-284, 287, 290, 293, 301, 393-396, 577-581, 607-615, Ps' Ex II, Ds' Ex II, Trial Court Finding of Fact (1), 428 F. Supp. at 1203) The pill is provided minors irrespective of their youth. (App. 22a; App. 25a) Minors between 13 and 17 years were provided contraceptives by the clinic during

* The Court of Appeals stated, "The decision on whether a particular individual will receive contraceptives is made in every case by a physician." (Slip Opinion at 4, App. 4a) The record does *not* support this finding. (App. 24a) The District Court Finding of Fact (4) stated in part: "When the girl arrives at the Center, her medical history is taken and she is then given blood pressure and hematocrit tests and a urinalysis is made. The female teenager then talks with a nurse or para-professional screening person. (Davis deposition p. 43) If the medical history is in order, contraceptive pills are prescribed if requested. At no time does the clinic make a specific determination as to the maturity of the minor (Davis deposition, p. 50), although if it is suspected that the patient is falsifying her medical history she is sent to the social worker or the Center's doctor for further discussion. (Davis deposition, p. 46) The doctor present does not see every patient, nor does he measure the maturity of those patients he does see. (Holtzman deposition, pp. 7, 12 and 14)." 428 F. Supp. at 1204.

1974. (Stip. 18, p. 75) A survey conducted by the clinic indicated that 88% of the minors surveyed lived with their parents, 89% had had intercourse at least once and 10% had been pregnant at some time. (Stip. 19, p. 76)

The Court of Appeals held that since the services renddered by the clinic to minors are entirely voluntary on the part of the minors and since no prohibitions exist against parental participation,

> " . . . we can find no deprivation of the liberty interest of parents in the practice of not notifying them of their children's voluntary decisions to participate in the activities of the Center." (Slip Opinion at 13, App. 13a).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW SERIOUSLY CONFLICTS WITH AND IMPAIRS THE DECISIONS OF THIS COURT PROTECTING THE RIGHTS OF PARENTS TO THE CARE, CUSTODY AND NURTURE OF THEIR CHILDREN FROM INTRUSION BY THE STATE

This case should be reviewed to save from emasculation the parental and family rights enunciated in this Court's decisions of *Meyer, Pierce, Prince* and *Yoder*. The decision below is a travesty of those pre-eminent precedents.

The Court of Appeals denied parents any right to notice of what the state was doing in examining and evaluating the religious beliefs and attitudes of the parents and their minor children and in providing dangerous, prescriptive contraceptive drugs to their minor children. The Court of Appeals concluded, nevertheless, in classic *1984* "doublethink":

> "The Plaintiffs (parents) remain free to exercise their traditional care, custody and control over their unemancipated children." (Slip Opinion at 13, App 13a)

How the parents are to carry on that high calling remains a mystery when they are kept from knowing of the state's clandestine activities. At least Plaintiffs' Doe were fortunate to learn of the state's secret provision of these dangerous drugs and value education to their 16 year old daughter. What of those parents who are left in the dark and have a child suffering from a blood clot or other serious side effects of the dangerous prescriptive contraceptive drugs? The Trial Court found this a grave source of concern. 428 F. Supp. at 1203; 441 F. Supp. at 1252. The Court of Appeals did not so much as mention it. The Court of Appeals' observation that parents "remain free to exercise their traditional care" will provide small comfort to those parents who never find out that dangerous state-provided drugs are the cause of their daughter's illness and yet must provide the medical care, perhaps the incorrect medical care, to attempt to cure her.

The Court of Appeal's decision duly acknowledges this Court's authoritative precedents upholding the rights of parents "to the care, custody and nurture of their children as a liberty interest protected by the Fourteenth Amendment". (Slip Opinion, p. 9, (App 9a, 10a). The Opinion even quotes from *Wisconsin* v *Yoder*, 406 U.S. at 232, 233 (1972) that such parental rights " '. . . must be read to include the inculcation of moral standards, religious beliefs and elements of good citizenship.' " (*Ibid*, p. 10, App 10a)

But the Opinion is a mere parody for, notwithstanding such recitals, the Court goes on to render such parental rights empty formalities. The Court declines to follow those decisions. The truth of the surreptitious state subversion of their young children is still to be kept from the parents. While paying homage to parental rights, the Opinion deletes reference to the fact that the County clinic's "rap session" deliberately examines and evaluates the religious beliefs and attitudes of the parents and the religious convictions of attending minors regarding premarital sexual activity by the minors and the propriety of their use of contraceptives.

(App. 18a, 19a) The Clinic Director, Ms. Davis for example, testified:

> "Q. Is there any discussion at these rap sessions regarding the morality, either from a point of view of general code of conduct or religiously based ethics of sexual activity by unmarried teenagers?
>
> A. I think they discuss their feelings, which involve a lot of the kinds of things you're talking about, their responsibility and the whole picture. I mean, the purpose of the rap session is to make them aware of these kinds of things.
>
> Q. The answer is, yes, they do—there is discussion of the morality of the life style that is involved with teenage sexuality?
>
> A. Their value systems, their responsibilities, if they are going to undertake this kind of decision, their feelings about it and so on. So there is a whole range of values being discussed here." (Record below p. 116. See Appendix C, generally)

The Trial Court found in footnote 3 at p. 1204 of 428 F. Supp:

> "3. A 'rap session' is intended to be an educational process and a part of the upbringing of a child, and is within the vital concern of the parents in the education of their children. See *Wisconsin* v *Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972)."

The Trial Court found the religious beliefs and rights of privacy of the parents implicated by the state's actions. It found that "the Center is not confining itself solely to the furnishings of sex education and birth control information. The findings of fact and the record indicate that the Center . . . inquires into the sexual mores of the children and their relations with their parents . . . ." 441 F. Supp 1251. By ignoring the existence of this invasion into family

affairs the Court of Appeals avoids the heavier burden of justifying such intrusion when "the interest of parenthood are combined with a free exercise claim . . ." *Wisconsin* v *Yoder*, 406 U.S. 205 (1972). Parental rights to inculcate religious and moral values should not be so cavalierly dismissed.

Blotted out of the Court of Appeals' discussion was the central issue contained in the Trial Court's Findings of Fact that "the most widely used birth control device, 'the pill', is fraught with risks" for minor users. 428 F. Supp. at 1203 (See Record below pp. 154,281-284,287,290,301,393-396,576-581,606-613. Joint Exhibit II). The Court of Appeals allows the state to continue to provide these dangerous prescriptive contraceptive drugs to children without notifying their parents *and the Court's Opinion never mentions the drugs' grave medical and psychological risks.*

The admission that minors as young as 13 participated and were furnished these dangerous, prescriptive contraceptive drugs without parental notice or participation was not acknowledged by the Court of Appeals. (Stipulation 18, p. 74, Record below, 428 F. Supp. 1202). Further, the Appeal Court's Opinion—in opposition to the Trial Court's Finding of Fact (4) 428 F. Supp at 1204—held that "(t)he decision on whether a particular individual will receive contraceptives is made in every case by a physician". (Slip Opinion at 4, App 4a). That this is not true is readily verified by reference to the testimony of the medical director, Dr. Holzman:

> "As far as seeing individual patients, if there are problems that arise and the staff of the clinic feels that it needs my expertise, then I'm available for them, but I do not see every patient that comes through there". (Record below p. 147, See Appendix D, generally)

Obviously, under the very precedents of this Court cited by the Court of Appeals an educational program such as

that conducted at the rap session could not be required by a state against parental objections. *Meyer* v *Nebraska*, 262 U.S. 390 (1923); *Pierce* v *Society of Sisters*, 268 U.S. 510 (1925); *Wisconsin* v *Yoder, supra*. Nor could contraceptives of whatever kind be provided under compulsion to minors or any other citizen. *Griswold* v *Connecticut*, 381 U.S. 479 (1965), at 497. And calculated evaluation of individual citizen's moral and religious scruples about premarital sex and the use of contraceptives can hardly be perceived as a proper area for government involvement. *Engel* v *Vitale*, 370 U.S. 421 (1962).

The apparent position of the Court of Appeals, however, is that what the State cannot do by mandate, it can accomplish by artifice. Having given lip service to *Meyer, Pierce, Prince* and *Yoder*, the Court set them, and the fundamental rights they stand for, abruptly aside on the basis that the program presented by the State here was "voluntary", i.e. minors as young as 13 "voluntarily" participated in them. Accordingly, the Court held, the State was free to do whatever it chose with the minors without notification or participation of their parents. The Court's position cannot be premised on any notion that the minors are mature and capable of informed consent. In fact, maturity is not required or determined by the clinic. (App. 22a, App. 25a, 26a) And the Court of Appeals did not consider maturity in any event. Where is the end to a proposition that allows immature, unemancipated 13 year olds to waive "voluntarily" fundamental rights of the family rooted in the "traditions and [collective] conscience of our people?" *Snyder* v *Massachusetts*, 291 U.S. 97, 105 (1933). If parents still are vested with the right to inculcate "moral standards, religious beliefs and elements of good citizenship" recognized by *Yoder, supra*, then surely the state cannot establish a program with the parents' children to evaluate those moral standards and religious beliefs and hold out to 13 year olds dangerous, prescriptive contraceptive drugs as a prize for attendance.

The Trial Court refused to adopt the transparency of the "voluntary" waiving of parental rights relied upon by the Court of Appeals.

The Trial Court held the state's program to be a "constructive taking" of parents' rights because "parental privacy and religious beliefs are implicated" and the decisions being made by possibly immature minors lie "within the sphere of decisions which parents are uniquely qualified to evaluate . . . and to provide the necessary guidance . . ." The Court stated further:

> "Finally, and most importantly, the actions are carried out in an atmosphere of secrecy which fails to put parents on notice as to the state's actions relative to their children and has the practical result of depriving parents of alternatives to counteract such actions, if they so desire." 441 F. Supp 1253.

Thus, the very principles so strongly defended in *Meyer, Pierce, Prince* and *Yoder* are adroitly undone and ". . . the private realm of family life which the state cannot enter", *Prince* v *Massachusetts*, 321 U.S. 158 at 166 (1944) is clandestinely invaded—indeed rendered vacant—without giving the parents the opportunity even to defend what they hold most sacred. Nothing in *Meyer, Pierce, Prince* or *Yoder* permits the state this intrusion upon the family. This interpretation by the Court of Appeals, if unrepaired by this Court's review, will leave the family without protection against unannounced state programs redesigning their children's lives. The enlightened society elite social planners envision is morally abhorrent to many parents. This state invasion of family life is not consonant with principles enunciated by this Court concerning "a society constitutionally committed to the ideal of individual liberty and freedom of choice" *Bellotti* v *Baird*, 99 S. Ct. 3035 at 3045 (1979).

The Trial Court found that the practices of the state here violated the parents' Free Exercise rights. It is surely

a grievious invasion of personal religious freedom for the state to examine and evaluate the religious beliefs of anyone, parent or child. This is so fundamental there is no need to cite authority. Yet the decision of the Court of Appeals is absolutely silent on this issue and nevertheless reverses the Trial Court.

It is not enough to cite leading precedents of fundamental law; they must be followed. The message eminating from the Court of Appeals to other courts in the Sixth Circuit is that the historic decisions of this Court recognizing the primary rights of parents, including their Free Exercise rights, need no longer be followed. This case cries out for relief. If this Court does not hear, where will the parents turn?

II. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING THE RIGHTS OF PARENTS TO BE INFORMED OF ACTIONS AFFECTING THE HEALTH AND UPBRINGING OF THEIR CHILDREN AND WIDESPREAD DEBATE OF THIS ISSUE REQUIRES THIS COURT'S RESOLUTION OF THE MATTER FOR THE PRESERVATION OF FAMILY RIGHTS

In holding that parents were not entitled to notice of the state's action the Court below recognized that this court had not squarely passed upon the issue. (Slip Opinion at 11, App A). But, in fact, it must be noted that the decisions of this Court have raised speculation whether parents are entitled to notice in any circumstance concerning activities of others, including the state, which affect the welfare and inculcation of values of their minor children. Thus, this Court's decisions in *Bellotti* v *Baird*, —U.S.—, 99 S. Ct. 3035 (1979) *Planned Parenthood of Missouri* v *Danforth*, 428 U.S. 52 (1976), and *Bellotti* v *Baird (Bellotti I)*, 428 U.S. 132 (1976) have opened a Pandora's box feeding doubts and activities presenting grave dangers to parents struggling in their efforts to raise their children in their own cultures and their own beliefs.

Further, the decisions of this Court have left a sense of ambiguity and hiatus concerning when parental authority must be given precedence over state interference, *Parham* v *J.R.*, 99 S. Ct. 2504 (1979) and when parental authority must be superseded, *Bellotti II*, *supra*, at 3050.

Representative of the consternation and confusion are discussions found in J. Holt's *Escape from Childhood* (1974); P. Wald, "Making Sense out of the Rights of Youth", 4 *Human Rights* 13 (1974); K. Kenmoton, "All Our Children", (Carnegie Council on Children, 1977); R. Mnookin, "Children's Rights: Legal and Ethical Dilemmas", *The Transcript*, Summer, 1978 (Boult Hall—Univ. of California at Berkeley); W. Watts, "Parent, Child and the Decision to Abort: A Critique of the Supreme Court's Statutory Proposal in *Bellotti* v *Baird*, 52 *So. Cal. L. Rev.* 1869 (Sept. 1979); Caplow, "The Loco Parent: Policy and Family Life", 1976 *B.Y.U.L. Rev.* 709; "Parental Consent Requirement and Privacy Rights of Minors: The Contraceptive Controversy", 88 *Harv. L. Rev.* 1001 (1975); Hafen, "Puberty, Privacy and Protection: The Risks of Children's 'Rights' ", 63 *ABA Journal* 1383 (Oct. 1977); Hafen, "Children's Liberation and the New Equalitarianism: Some Reservations About Abandoning Youth to Their 'Rights' ", *B.Y.U.L. Rev.* 604 (1976); "Medical Care for the Child at Risk: On State Supervention of Parental Autonomy", J. Goldstein, 86 *Yale L. Journal*, 645 (1977).

That the questions raised in this case are under significant debate across the country is verified by essentially similar litigation at present pending in at least two other federal courts:

> *Tenland, et al* v *Planned Parenthood Association of Cincinnati, Inc., et al*, Civil Case No. 1-78-755, USDC Sd. Ohio, Western Division;
>
> *Frederick Kaneshiro, et al* v *George Yuen, et al*, Civil Case No. 78-0023, USDC, District of Hawaii.

The issue of validity of a state statutory requirement of notification to parents as a prerequisite to a minor's receiving an abortion is at present before this Court. 79-5903, *H L* v *Matheson, Utah* , (Utah Sup. Ct. 12-6-79), prob. juris. noted 2-25-80, Review granted 48 LW 3574. Various members of this Court have characterized the abortion question as unique and therefore distinguishable from contraceptive decisions, *Carey* v *Population Services International*, 431 U.S. 678 (1977), concurring opinions of Powell, Jr. at 705, Stevens, J. at 713, and see dissenting opinion of Rehnquist, J. at 717. Nevertheless, as is obvious from the lower Court's decision here, serious discord exists concerning the rights of parents to be notified of and involved in state action relating to usage of contraceptives by their own children. The review of this case in conjunction with the review of *H L* v *Matheson; supra,* would deter the continued application of abortion criteria to parental right issues in other circumstances. Otherwise parental rights to care and nurture their children may be swept away in the flood of the abortion discussion.

The important constitutional question of parental notice presented in this case, has not been, but should be, settled by this Court. Supreme Court Rule 19.1(b).

For these reasons, this Court should authorize review of this case in order to restore and clarify the respective rights and responsibilities between parents and the state in this area of controversy.

CONCLUSION

For all the foregoing reasons it is respectfully requested that the Court should grant this petition.

Respectfully submitted,

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APPENDIX

No. 78-1056
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN DOE, JANE DOE, THOMAS M. GROST and CORA W. GROST, Individually and on behalf of all others similarly situated,
Plaintiffs-Appellees,

v.

CATHY E. IRWIN, GEORGE GROSS, ELINOR HOLBROOK, GILDA RICHARDSON, MARIE VANDE BUNTE, MARY KAY WICKENS, DAVID HOLDEN and MARY WOODS, in their official capacities,
Defendants-Appellants.

APPEAL from the United States District Court for the Western District of Michigan.

Decided and Filed February 26, 1980.

Before: WEICK and LIVELY, Circuit Judges; and PHILLIPS, Senior Circuit Judge.

LIVELY, Circuit Judge. This case involves the distribution of contraceptives to minors, without notice to their parents, by a publicly operated family planning clinic. The plaintiffs are parents of a 16-year-old daughter who received contraceptives from the clinic and other parents of two teen-age children who live in the area served by it. A class was certified by the district court consisting of "all parents residing in the county of Ingham who have children between the onset of puberty and the age of majority under their parental care, custody and control, and who, as parents, are opposed to having their children receive con-

traceptive information, devices and medication without the knowledge and against the wishes of the parents who comprise this class." The defendants are administrators of the Tri-County Family Planning Center (the Center) and board members and administrators of the Ingham County, Michigan, Health Department.

I.

Many facts concerning the operation of the Center were stipulated. It is operated in Lansing by the Ingham County Health Department under contract with the Michigan Department of Public Health. The original defendants and their successors are responsible for the policies and operations of the Center. The Center serves adults as well as minors. Minors are served without regard to whether or not they are emancipated. Neither the Center nor any of its services related to minors are advertised, and minors are not sought out or encouraged to attend the Center by any of the defendants or any other county official. Minors are permitted to come to the Center either with or without parental consent. Contraceptives are prescribed and distributed to minors both with and without parental knowledge or consent. There is no charge for devices and medication distributed by the Center.

A weekly "rap session" is conducted by the Center. The rap sessions are educational. They deal with birth control methods, the responsibilities of being sexually active and the desirability of communicating with parents and others involved in a decision to engage in sexual activities. No minor is served by the Center until he or she has attended a rap session. Female minors who return to the Center after attending a rap session are required to give a complete medical history and to undergo a physical examination. If any medical problems are indicated, the applicant is referred to her family physician or another physician.

Only if no medical problems are indicated or discovered is a contraceptive device or medication prescribed to a minor.

In the fiscal year immediately prior to the filing of this action the Center distributed contraceptive devices or medication to 623 females who were 17 years old, 466 who were 16, 210 who were 15, and 74 who were 14. According to a study conducted at the Center, 88 percent of the minors surveyed lived with their parents, 89 percent had intercourse at least one time before visting the Center and 10 percent of the female minors had been pregnant at least once. A great majority of those served by the Center receive birth control pills. Though some patients receive inter-uterine devices (IUD), the Center will not insert an IUD in a minor without parental consent. No abortions or sterilizations are performed at the Center.

In her deposition, the program administrator of the Center described the weekly rap sessions in great detail. The sessions are held at the county health office, and each lasts approximately 2-1/2 hours. The sessions are intended to give factual information about birth control and human reproduction. They are conducted by a woman with a master's degree in social work, assisted by medical students and university students majoring in social work. Those attending the sessions are encouraged to ask questions, and the leaders attempt to deal with misinformation about birth control. The pros and cons of various methods of birth control are discussed, including possible side effects. Parents are encouraged to attend if they inquire, but no effort is made to seek their attendance. Those who attend are encouraged to discuss their sexual interests with their parents, and those conducting the sessions offer to help the young people talk with their parents about the subjects covered in the sessions.

Every minor who attends a rap session is required to register and fill out a form. Those who desire to proceed

after the discussions at the rap session must make an appointment at the Center; many who attend the rap sessions never to on to the Center. At the first visit to the Center a personal medical history is taken and a physical examination is conducted. If there are no indications of medical problems, female patients are usually given a three-month supply of birth control pills. If a patient returns for an additional supply, a number of questions are asked to determine whether any symptoms have been noted which indicate side effects. In addition, she is checked physically and certain tests are made. The decision on whether a particular individual will receive contraceptives is made in every case by a physician. Minors are not asked if they have the consent of their parents before contraceptives are given to them, and the Center does not notify parents either that their children have attended a rap session or that they are receiving contraceptives.

The administrator stated that the personnel of the Center do not advocate that unmarried teenagers become sexually active. However, they try to deal with individuals "where they are" and promote their physical and psychological well-being. She described the Center as a "non-judgmental" organization which makes a service available to the community for those people who wish to use it. A physician who is a member of the Department of Gynecology at Michigan State University testified that his department acts as medical director of the Center. The department issues guidelines for personnel of the Center and maintains its quality of medical care. The doctor testified that the physical examinations, which include a check for venereal disease, are extremely thorough. He must personally approve the distribution of contraceptives to a patient where the tests and examinations indicate any "deviation from the normal." Personnel of the Center are directed to make an evaluation of the level of understanding of each patient. This witness concluded that most minors

who come to the Center understand the benefits of contraception versus pregnancy and the hazards of any method of contraception chosen.

Though none of the factual testimony about operations of the Center was disputed, witnesses for the plaintiffs took sharp issue with opinions expressed by the administrator and medical director. One witness, who operates a marriage clinic in Los Angeles, testified to his opinion, based on many years of experience, that adolescents do not have sufficient maturity to utilize contraceptives for the purpose of preventing pregnancy. He further testified that the nonjudgmental approach of the Center is viewed by teenagers as a green light for the use of contraceptives. In addition to stating his belief that programs such as that carried on by the Center do not reduce unwanted pregnancies, this witness stated that family planning clinics contribute to an epidemic in venereal diseases which is known to exist in the United States at the present time. Finally, the witness testified that family stability and trust among family members are undermined by practices of the Center because parents feel that an outsider has usurped their rightful position of authority over their children. This witness had training in sociology and psychology and a Ph.D. degree in communications.

A medical witness for the plaintiffs who engages in family practice testified to having a wide experience with adolescent patients. This physician testified extensively with respect to the physical and psychological risks which he and others associate with the use of various types of contraceptives by adolescent females. It was his opinion that most adolescents do not have the capacity to make decisions on birth control and to understand what is involved in choosing and using a contraceptive. This witness believed that the availability of contraceptives for minors increases promiscuity and the incident of venereal disease.

He testified that the activities of organizations such as the Center would be perceived by teenagers as authority figures "condoning fornication."

The defendants presented a medical witness, certified in pediatrics and public health, who is Professor of Population Planning at the University of Michigan. He testified to his opinion that the use of contraceptives by teenagers reduces pregnancies and that family planning clinics help avert unwanted births. He felt that the distribution of contraceptives to teenagers has very little, if any, effect on the "slight increase" in promiscuity in this country. The witness also stated he had no doubt that a requirement for parental consent would have a negative effect on the access that minors have to a family planning clinic. He detailed the health hazards to teen-age mothers and their babies, and stated there would be many more unwanted babies if teen-age girls were not able to obtain contraceptives without their parents' consent.

II.

The district court found that the Center's practice of distributing contraceptives to minors without notice to their parents violates constitutional rights of the parents. *Doe* v. *Irwin*, 428 F.Supp. 1198 (W.D. Mich. 1977). In the order granting a permanent injunction which accompanied the district court's opinion, the defendants were directed "to cease and desist from distributing contraceptives and contraceptive devices to minor disregard, unemancipated children in the absence of notice to the parents of such children and a reasonable opportunity for the parents of such children to consult with their children as to the decision of the child whether or not to obtain contraceptives or contraceptive devices." The defendants appealed, and this court remanded the case for consideration by the district court in light of *Carey* v. *Population Services Int'l.*, 431 U.S. 678

(1977), which was decided by the Supreme Court after the district court rendered its decision. Following remand the district court found that *Carey* did not require a different result. A second opinion was issued, 441 F.Supp. 1247 (1977), and the previous injunctive order was readopted and reaffirmed. The order was stayed pending appeal.

Though the district court made a number of findings of fact with reference to the testimony of various witnesses, its decision appears to be based primarily upon this conclusion of law:

> [I]n the absence of overriding rights in their minor children and in the absence of compelling State interest, I conclude that parents have a constitutionally protected right to participate in the very important decisions of their minor, unemancipated children as to whether or not to initiate sexual activity or to undertake the substantial medical risks of certain contraceptives. The State, quite simply, in the absence of a compelling interest, may not, by statute, regulation, or action, totally exclude the parents of the child from such a momentous decision. Nor may it supplant the advice, love, understanding, and control of the parent with state-funded and state-controlled physicians, social workers, and counselors. Although the goal of the defendants, acting under color of state law, may be well intended, they are not warranted in insinuating their way into the delicate relationship between parent and child.
>
> 428 F.Supp. at 1209-10.

In its opinion following remand, the district court discussed a number of cases in which the Supreme Court has recognized the right of parents to the "custody, care, and religious and moral education of their children . . . ." 441

F.Supp. at 1249. Consideration of these decisions and various commentaries led the district court to the following conclusion:

> Parental authority is plenary. It prevails over the claims of the state, other outsiders, and the children themselves. There must be some compelling justification for interference.
>
> *Id.*

The district court recognized that the Center does not prohibit parents in any way from inculcating their children with their religious beliefs. However, the court reasoned that "it is an invasion of parental rights to require them to anticipate in advance the multitude of situations which may act upon their children and prepare them in advance to deal with any moral question that may arise in the course of that child's young life, particularly where the parent is prevented from being made aware of the actions of a state-run agency which facilitate a situation inimical to the values the parents are attempting to teach their children." 441 F.Supp. at 1253. The foregoing quotation and other statements in the opinion[1] indicate a finding by the district court that the effect of the Center's practice of not notifying parents is equivalent to the state's supplanting the parents with respect to their children's decisions in regard to sexual activity and birth control.

III.

The parties and *amici curiae* have briefed a number of issues quite thoroughly. Many of these issues will not be discussed in this opinion because they are not necessary to

[1] *E.g.*,"... so long as the defendant Center continues to treat children in a manner whereby the parents of those children *cannot* become aware of the contact ..." 441 F.Supp. at 1253 (emphasis added); "these actions are carried out in an atmosphere of secrecy which fails to put parents on notice as to the state's actions relative to their children ...." *Id.*

a decision. We recognize that three separate sets of rights are involved—those of parents, those of children and those of the State of Michigan, acting through the Center. We will first attempt to identify the rights and the constitutional principles which underlie them before applying these principles to the particular issues in this case.

A.

The constitutional right of persons who desire to use the services of the Center is the right of personal privacy. In a series of cases dealing with laws affecting the right to abortion, the Supreme Court has held consistently that a woman's decisions concerning child-bearing are within the most intimate area of personal privacy. *E.g., Roe* v. *Wade,* 410 U.S. 113, 152 (1973); *Whalen* v. *Roe,* 429 U.S. 589, 599-600 (1977). One of the first explicit recognitions of the right of privacy came in a case dealing with a statute which prohibited the use of contraceptives. *Griswold* v. *Connecticut,* 381 U.S. 479 (1965). Though the state has somewhat broader authority to regulate the conduct of children than that of adults, minors do possess a constitutionally protected right of privacy. *Bellotti* v. *Baird,*—U.S.—, 99 S.Ct. 3035, 3043-44 (1979); *Carey* v. *Population Services Int'l.,* 431 U.S. 678, 692-93 (1977); *Planned Parenthood Of Missouri* v. *Danforth,* 428 U.S. 52, 74-75 (1976); *Wynn* v. *Carey,* 582 F.2d 1375, 1383-84 (7th Cir. 1978) (*Wynn* was re-affirmed and a permanent injunction granted in 599 F.2d 193, 196 (1979)). As with adults, the minor's right of privacy includes the right to obtain contraceptives. *Carey* v. *Population Services, supra.*

B.

The Supreme Court has long recognized the right of parents to the care, custody and nurture of their children as

a liberty interest protected by the Fourteenth Amendment. *See Meyer* v. *Nebraska*, 262 U.S. 390 (1923); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); *Parham* v. *J.R.*—U.S.—, 99 S.Ct, 2493, 2504 (1979). The Court has defined and explained the basis of parental rights in various terms:

> The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.
>
> *Pierce* v. *Society of Sisters, supra*, 268 U.S. at 535.
>
> It is a cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. *Pierce* v. *Society of Sisters, supra*. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.
>
> *Prince* v. *Massachusetts, supra*, 321 U.S. at 166.
>
> The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.
>
> * * *
>
> The duty to prepare the child for "additional obligations," referred to by the Court, must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship.
>
> *Wisconsin* v. *Yoder, supra*, 406 U.S. at 232, 233.

C.

Every state has a substantial interest in the health and welfare of all its inhabitants. The Supreme Court has recognized that a state has "an independent interest in the well-being of its youth." *Ginsberg* v. *New York*, 390 U.S. 629, 640 (1968). Michigan's interest in protecting minor females from the physical and emotional hazards of unwanted pregnancies led it to establish clinics such as the Center. This is a legitimate state interest.

IV.

The district court recognized the existence of the three sets of rights. However, it concluded that the state's interest is not "compelling" and that the right of parents to participate in the decisions of their children that involve sexual activity and birth control outweighs the right of minors to make these decisions independently. This conclusion led the court to require the state to impose a limitation on the right of minors which the state had not chosen to impose. We believe this was error.

A.

The Supreme Court has not squarely decided whether a state may impose a requirement of parental notice, as opposed to parental consent, as a condition of a minor's receiving an abortion. *Bellotti* v. *Baird, supra*,—U.S. at—, 99 S.Ct at 3053 n.l (Stevens, J., concurring). However, the Seventh Circuit held unconstitutional an abortion statute that resulted in parental notice in all cases. *Wynn* v. *Carey, supra*, 582 F.2d at 1386-88, and at least one district court has held such a notice requirement unconstitutional. *Women's Community Health Center, Inc* v. *Cohen*, 477 F.Supp. 542, 546-48 (D. Me. 1979). Neither has the Supreme Court determined whether parental notice may be

required before birth control information, devices and medication may be distributed to unemancipated minors. Though this issue was not involved in *Carey* v. *Population Services Int'l., supra,* the district court found support in the opinions of various Justices for its conclusion that such a requirement would be permissible. *Doe* v. *Irwin, supra,* 441 F.Supp. at 1257-60. A three-judge district court in *T-------H.-------*v. *Jones,* 425 F.Supp. 873 (D. Utah 1975), affirmed on statutory grounds only, 425 U.S. 986 (1976), came to a similar conclusion several years before *Carey* was decided. *Id.* at 882.

B.

The district court's conclusion that the Center's practice of distributing contraceptive devices to minors without notifying parents is unconstitutional was based upon the previously noted Supreme Court decisions which define parental rights. The plaintiffs rely on the same authorities on appeal.

There is one fundamental difference between all the cited cases and the present one. In each of the Supreme Court cases the state was either requiring or prohibiting some activity. In *Meyer* v. *Nebraska, supra,* the state forbade the teaching of foreign languages to pupils who had not passed the eighth grade. The Court held the statute not reasonably related to any end within the competency of the state and violative of parents' Fourteenth Amendment right to liberty. In *Pierce* v. *Society of Sisters, supra,* the statute required all children between the ages of 8 and 16 to attend public schools. The Court found that the law unreasonably interfered with the liberty interest of parents to direct the upbringing and education of their children, including the right to send them to accredited private schools. Again in *Wisconsin* v. *Yoder, supra,* the law in question made school attendance compulsory. The Court held that Amish parents'

First Amendment rights to the free exercise of their religion were infringed by the attendance requirement. In *Prince* v. *Massachusetts, supra,* child labor laws were construed to prohibit street sales of religious tracts by children. In that case the Court upheld the conviction of a parent who contended that these laws unreasonably interfered with her right of free exercise of religion and her parental rights. In so holding, the Court determined that a state's "authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience." 321 U.S. at 166.

C.

The State of Michigan, acting through the Center and defendants, has imposed no compulsory requirements or prohibitions which affect rights of the plaintiffs. It has merely established a voluntary birth control clinic. There is no requirement that the children of the plaintiffs avail themselves of the services offered by the Center and no prohibition against the plaintiffs' participating in decisions of their minor children on issues of sexual activity and birth control. The plaintiffs remain free to exercise their traditional care, custody and control over their unemancipated children. Assuming the factual findings (as opposed to assumptions)[2] of the district court are correct, we can find no deprivation of the liberty interest of parents in the practice of not notifying them of their children's voluntary decisions to participate in the activities of the Center.[3]

---

[2] In its opinions the district court held that the state may not "totally exclude" the parents from momentous decisions of their children and "supplant" the advice, love, etc. of the parents with state-funded and state-controlled personnel, 428 F.Supp. at 1210. To the extent these statements represent findings of fact by the district court, such findings are clearly erroneous. There was no evidence that parents are excluded from any decisions or supplanted by the activities of the Center. The uncontradicted evidence was that personnel of the Center encourage minors to involve their parents in their decisions concerning sexual activity and birth control, and even offer to help bring the parents into discussions of these subjects.

[3] This is true even though the district court felt that the religious beliefs of plaintiffs are "implicated" in the parents' liberty interest. 441 F.Supp. at 1251. *Cf. Prince* v. *Massachusetts, supra,* 321 U.S. at 166.

We do not find the support for plaintiffs' position which they and the district court perceive in *Carey* v. *Population Service, Int'l., supra*. That case concerned a statute which, *inter alia*, made it a crime to sell or distribute contraceptives of any kind to a minor under sixteen. The Court found this total prohibition to be violative of the privacy right of minors who made the personal decision to use such devices. There was no majority opinion on this particular issue. The various opinions of the Justices do not indicate a belief that parents have a constitutional right to be notified by a public facility which distributes contraceptives to unemancipated minors.

Since we find no unconstitutional interference with the plaintiffs' rights as parents, there is no need to consider whether a "compelling" state interest was involved. For the same reason, it is not necessary to determine whether parental rights "outweigh" those of their minor children.

V.

The question in this case is not whether a state may impose a condition which would limit the right of privacy of the minors whose interests are involved. Rather, it is whether the Constitution requires such a condition. In the absence of a constitutional requirement for notice to parents, it is clearly a matter for the state to determine whether such a requirement is necessary or desirable in achieving the purposes for which the Center was established. There is no basis for a federal court to impose conditions in the absence of an overriding constitutional requirement.

The desire of the parents to know of such activities by their children is understandable. However, the only issue before the district court and this court is whether there is a constitutional obligation on the Center to notify them. The

record before us does not establish that the Center infringes a constitutional right of the plaintiffs by its practice of distributing contraceptive devices and medication to unemanicipated minors without notice to their parents.

The judgment of the district court is reversed with directions to dismiss the complaint. No costs on appeal.

APPENDIX B

UNITED STATES CONSTITUTION:

The First Amendment Religion Classes, provide:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .

The Fourteenth Amendment, Section 1, provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Ninth Amendment provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

APPENDIX C

Deposition of Marianne Davis, Program Administrator of the Ingham (Tri-County Michigan) Family Planning Center, taken November 4, 1975, and appearing in the record below of this matter at pages 84 to 141. Excerpts thereof follow:

At page 92 of the Record the witness testified:

(By Plaintiffs' Counsel, Mr. McCormick):

"Q. Okay. Now, with respect to age, does the clinic provide its educational, social and medical services regardless of age?

A. Yes. That's in compliance with the guidelines of H.E.W.

. . .

Q. I wonder if you would at this point explain the rap session aspect of your educational or social program. . . .

In the session, they discuss what is birth control, the human physiology or reproduction, all kinds of factual kinds of things about birth control. They discuss communication with parents. They discuss communication with friends, with each other, with their partner, and they discuss all kinds of misinformation about birth control and any questions that anybody attending would like to have answered.

. . .

Q. So the rap sessions then are really geared more toward the, let's say, attitude or mentality of the younger people?

A. Yes. It's geared to their—where they are.

. . .

Q. What are the youngest that are in attendance—

. . .

A. Well, we would have a wide range, but 14 would be probably the youngest of any grouping. That's where you ask the question. And we wouldn't have a lot of them, I don't think.

Q. What's the typical age?

A. Sixteen and seventeen. Seventeen is the most, and sixteen is the next, and then it drops off from there.

Q. Fewer fifteen year olds?

A. Um-hum.

Q. Even fewer fourteen year olds and even fewer thirteen year olds?

A. Um-hum.

Q. And substantially no twelve year olds?

A. No. I would be surprised." . . .

(Page 99, Record)

"Q. In the rap session or when your people talk to these teenagers, do you initiate any discussion regarding parental attitude, regarding their parents' attitudes towards either contraception or their being sexually active?

A. That's one of the major topics, is discussing those kinds of things, talking about communications with parents. If the people at the rap session are having difficulty talking to their parents, the social worker would offer to help them in any way she could, including going to their home with the student and talking to them.

Q. And these matters are not just responded to but actually are brought up for discussion actively?

A. Oh, yes. That's pursued at great length.

Q. I'm talking about two distinct things here; one, birth control—

A. Um-hum.

Q. —and two, sexual activity.

A. Yes.

Q. Their sexual relations with a boy friend, date, whatever?

A. Um-hum.

Q. These are discussed?

A. Yes, Um-hum.

Q. And their parents' attitude towards these subjects are discussed?

A. Yes. And it is also discussed, can you talk to your parents about this, would you need help to talk to your parents, would you want to talk to your parents, could we help you.

. . .

Q. . . . My question was, would it be fair to say that from the responses that the kids give in the rap sessions, . . . That the majority of their parents don't know that they're sexually active, if they are, and that the majority of parents are believed by the teenagers to oppose their being sexually active?

A. . . . I think that would be the case for the people attending that night.

. . .

Appendix C

(Page 105, Record)

"Q. The parents of the . . . people who come to the rap sessions are not thereafter contacted by the clinic or by the Health Department?

A. No. These forms are a medical record and, therefore, are confidential information.

Q. It's strictly considered confidential between the individuals attending and the clinic. Are the minors who come to the clinic or come to the rap sessions asked if they have their parent's approval to participate in that program?

A. No. The question is not. (sic)

Q. If they come back for an appointment to receive a prescription for the pill or any other form of birth control, in the event that they are minors, are they asked if their parents—if they discussed this with their parents and if their parents approved?

. . .

A. That's not a regular question, no.

Q. The clinic does not consider that a relevant consideration at that point?

A. It's not a part of our guidelines.

Q. You are strictly following the guidelines of the State Health Department or the H.E.W., you're talking about?

A. Both.

. . .

(Page 116, Record)

"Q. Is there any discussion at these rap sessions regarding the morality, either from the point of view

of general code of conduct or religiously based ethics of sexual activity by unmarried teenagers?

A. I think they discuss their feelings, which involve a lot of the kinds of things you're talking about, their responsibility and the whole picture. I mean, the purpose of the rap session is to make them aware of these kinds of things.

Q. The answer is, yes, they do—there is discussion of the morality of the life sytle that is involved with teenage sexuality?

A. Their value systems, their responsibilities, if they are going to undertake this kind of decision, their feelings about it and so on. So there is a whole wide range of values being discussed here.

. . .

Q. In the course of these discussions, does the social worker then have to deal with the question of those teenagers who, from their family background, have scruples about being sexually active, that are thinking about it or involved in it and are looking for some counsel as to how to resolve these problems? Do you deal with that kind of situation?

A. Yes. We would be available for any student to come and talk to about this to try to work out some way of opening up communications with their parents and with any other person that might help them work out some communications with their parents. Some times that could be a brother or a sister, an older brother or sister or a minister or somebody like that . . . .

(Page 123, Record)

"Q. They are referred routinely to a rap session?

A. Yes.

Q. That's a pre-requisite to, let's say, having a physical and cervical examination and a prescription for the pill?

A. Yes. . . .

(Page 132, Record)

"Q. What happens at the rap session and the interviews that occur at the clinic then are the basis for a determination being made whether or not an individual is mature enough to be given this service without parental involvement?

A. The guidelines do not require parental involvement, so we're concerned about the patient's health.

Q. The guidelines then don't impose any formal requirement of making a determination of maturity level of the individual?

A. This is a public health clinic, a preventative health clinic, and that is our concern.

Q. I didn't understand that.

A. We're a health clinic, so we're concerned about health.

Q. Okay. To the best of your knowledge, the guidelines you follow then don't require any specific determination of maturity level of the girl?

A. No.

Q. If she is in good physical health, if she wants, let's say, the pill, if there are no counterindications that makes you suspicious of this person being mentally disturbed or something, that's enough to satisfy the requirements?

A. If her health is such that there are no counterindications, then she's served. . . .

Appendix C

(Defendants' Counsel, page 138, Record)

"Q. . . . Is it mandatory that minors attend a teen rap session before further birth control information or devices can be distributed to them?

A. Yes.

Q. How do you make sure that the teenagers do attend?

A. They are given a blue card and at the teen rap they're assigned a case number on that white form, Joint No. 1.

. . .

APPENDIX D

Deposition of Gerald Holzman, M.D., Member of Michigan State University Department acting as Medical Director of the Ingham (Tri-County Michigan) Family Planning Center, taken on November 4, 1975, and appearing in the Record of this matter below at pages 143 to 177.

The witness testified at page 147 of the Record below as follows:

(By Plaintiffs' Counsel):

"Q. . . . At the clinic, what is your role as a physician? Where do you come in?

A. I think the case in point would be the guidelines is to see policies. As far as seeing individual patients, if there are problems that arise and the staff of the clinic feels that it needs my expertise, then I'm available for them, but I do not see every patient that comes through there.

. . . .

(Page 153, Record)

"Q. My question is simply whether or not every girl who comes to the clinic and receives birth control devices or medication necessarily sees a physician during the course of it.

A. She does not. It is our judgment that she has adequate care.

. . . .

Q. When is it deemed necessary for a patient to see a doctor, under what circumstances?

A. I could list all the relative and the absolute contraindications for each device, which is, I believe, in part contained in the guidelines. It would

be best summarized when the individual seeing that patient deems it necessary that there is some deviation from normal and, therefore, they should get another opinion or an expert opinion.

Q. Would you give just a few examples of the contraindication that arise?

A. Question of thrombophlobitis, question of breast mass, question of diabetes, question of hypertension, question of infection.

. . .

Q. Do you have any rules that's followed with respect to a minimum age for prescription of the pill?

A. No. Well, I would back up on that. If the person is not menstruating yet, I would think that's the minimum age.

Q. The fact that she's menstruating?

A. Yes.

Q. No requirement that she has been menstruating for any specific period of time?

A. No.

. . .

Q. Now, do you make any kind of an evaluation of the level of understanding or maturity of the girl or woman who is there?

. . .

A. We've already established that, that the physician does not see every patient, so the obvious answer to that question is no. Does clinic personnel; yes, very definitely.

Q. . . . What steps do they take to ascertain the maturity level of the girl?

A. I'm sorry, I misunderstood your question then, because I thought you said understanding.

. . .

Q. Is there any kind of psychological testing administered to the minors to ascertain if they are sufficiently mature to make this judgment on their own to have birth control?

A. I wish you would suggest a psychological test. I don't know that one exists for that.

Q. You don't know of any psychological test that would ascertain the level of maturity?

A. Maturity, no, I don't.

Q. I guess your answer then is that, therefore, none are given?

A. None are given."

Supreme Court, U. S.
FILED
JUN 16 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-1811

JOHN DOE, JANE DOE, THOMAS M. GROST and CORA W. GROST, individually and on behalf of all others similarly situated,

Petitioners,

-vs-

CATHY E. IRWIN, Administrator and GEORGE GROSS, D.O., Medical Director, Tri-County Family Planning Center: ELINOR HOLBROOK, GILDA RICHARDSON, MARIE VANDE BUNTE, MARY KAY WICKENS and DAVID HOLDEN, M.D., Members of the Ingham Cty. Board of Health; MARY WOODS, R.N., Acting Director, INGHAM COUNTY HEALTH DEPARTMENT, and their successors in office.

Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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INDEX

Page

QUESTIONS PRESENTED..... 1

STATEMENT OF THE CASE 3

REASONS FOR DENYING THE WRIT..... 5

I. THE DECISION IN THE COURT OF APPEALS FINDING NO CONSTITUTIONAL REQUIREMENT FOR PARENTAL NOTIFICATION PRIOR TO THE DISPENSING OF CONTRACEPTIVES TO MINORS VOLUNTARILY SEEKING SAME IS CONSISTENT WITH AND SUPPORTED BY THE DECISIONS OF THIS COURT WITH RESPECT TO FAMILY RIGHTS

II. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH THE DECISION OF THIS COURT WITH RESPECT TO THE RIGHT OF PRIVACY IN AREAS AFFECTING PROCREATION..... 11

CONCLUSION..... 15

APPENDIX

Excerpts from Deposition of Marianne Davis..... 1

Excerpts from Deposition of Gerald Holzman, M.D..... 7

CITATIONS

Decisions Cited:

Abington School District v. *Schempp,* 374 U.S. 204 (1963) 6

Bellotti v. *Baird,* 428 U.S. 132 (1976) 12

Bellotti v. *Baird,* 443 U.S. 622 (1979) 12

Carey v. *Population Services International,* 431 U.S. 678 (1977) 12, 13

Civic Awareness of America v. *Richardson,* 343 F. Supp. 1358, aff. per curiam; 7th Cir., March 9, 1976, unpublished opinion 7

Eisenstadt v. *Baird,* 405 U.S. 438 (1972) 12

Griswold v. *Connecticut,* 381 U.S. 479 (1965) 12

H. L. v. *Matheson,* 79-5903, 604 P.2d 907 (1979) (Utah Sup. Ct. 12/6/79), prob. juris noted, 2/25/80, review granted 100 S. Ct. 1077 (1980) 14

Meek v. *Pittinger,* 421 U.S. 349 (1975) 6

Meyer v. *Nebraska,* 262 U.S. 390 (1923) 5, 6, 9, 11

Pierce v. *Society of Sisters,* 268 U.S. 510 (1925) 5, 6, 9, 11

Planned Parenthood of Missouri v. *Danforth, 428 U.S. 52 (1976)* 12

Prince v. *Massachusetts,* 321 U.S. 158 (1944) .5, 7, 9, 11

Roe v. *Wade,* 410 U.S. 113 (1973) 12

T. H. v. *Jones,* 425 F. Supp. 573 (D. Utah, C.D. 1975) aff'd. in part 425 U.S. 986 (1976) 12

Wisconsin v. *Yoder,* 405 U.S. 205 (1977) 5, 6, 9, 11

Constitutional Provisions:

Religion clauses, First Amendment..... *passum*

Ninth Amendment..... *passum*

Due Process and Equal Protection clauses, Fourteenth Amendment..... *passum*

Miscellaneous:

Opinion Atty. Gen., No 5360 (January 22, 1980).... 5

Campbell, *"The Role of Family Planning, in the Reduction of Poverty"*, Journal of Marriage and the Family, Vol. 30, p. 236-245 (1968) 7

Menken, *"Tennage Childbearing: Its Medical Aspects and Implications for the United States Population,"* Research Reports Vol. 1, Demographic and Social Aspects, Coms'n on Population Growth and the American Future, p. 332-353 (1972)..... 7

Tyrer and Josimovich, *"Contraception and Teenagers", Clinical Obstetrics and Gynecology,* Vol. 20, No. 3, September, 1977..... 10

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Respondents, Cathy E. Irwin, George Grost, D.O.,Tri-County Family Planning Center, Elinor Holbrook, Gilda Richardson, Marie VandeBunte, Mary Kay Wickens, David Holden, M.D., Mary Woods and the Ingham County Health Department respectfully request that the Petition for a Writ of Certiorari to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 26, 1980 be denied.

QUESTIONS PRESENTED

The Ingham County Health Department operates the Tri-County Family Planning Center (the Clinic) which provides non-prescriptive and prescriptive contraceptives to individuals voluntarily seeking same. The Clinic serves minors as well as adults. Minors are served without regard to whether or not they are emancipated and are permitted to come to the center with or without parental consent. Non-prescriptive and prescriptive contraceptives are dispensed to minors both without and with parental knowledge or consent without charge for the devices and medication distributed by the Clinic.

"Rap sessions" are conducted by the clinic which are educational in nature and deal with birth control methods, responsibilities of being sexually active, and the desirability of communicating with parents and other involved in a decision to engage in sexual activities. No minor is served by the Clinic until after attending a rap session. The rap sessions are not as set forth by Petitioner "designed to influence immature minor children to use hazardous prescriptive contraceptive drugs contrary to the religious

beliefs of parents and their children." That statement by Petitioners is not supported by the record, by the opinions of the District Court, or by the opinion of the Court of Appeals. The minor has already voluntarily come to the Clinic to obtain contraceptive devices. The minor, in 89% of the cases in 1974, was already sexually active. The purpose of the rap session is educational. If no medical problems are indicated or discovered, contraceptive devices or medications are prescribed to a minor.

Contrary to the position of the parents, the District Court of the Western District of Michigan in neither opinion, 482 F. Supp. 1198 (W.D. Mich. 1977) and 441 F. Supp. 1247 (1977), found any constitutional infirmity with the practice of the Clinic with respect to the "rap sessions". The District Court, for the reasons set forth in its opinion, only prohibited the dispensing of all prescriptive and non-prescriptive contraceptive devices to unemancipated minors without parental notification and consultation. Only the County appealed the decision of the District Court. The parents did not cross-appeal the failure of the District Court to enjoin the "rap sessions". The only issue appealed to the Sixth Circuit was the District Court prohibition of the dispensing of all contraceptives to minors without parental notification. The Sixth Circuit reversed, finding *no constitutional right* in parents to be notified by the Clinic prior to dispensing contraceptives to minors voluntarily seeking same. That Court correctly determined that it is a matter for the state to determine whether such a requirement is necessary or desirable to achieve the purposes for which the Clinic was founded. Accordingly, the questions presented are not as set forth by the Petitioners, but are as follows:

1. Do parents have a *constitutional right* under the First, Ninth and Fourteenth Amendments to notification prior to the dispensing of prescriptive and

non-prescriptive contraceptive devices by a county (state) health department clinic to minors voluntarily seeking same?

2. Does a blanket requirement of notification to a minor's parents that the minor is voluntarily seeking contraceptive devices from a county (state) clinic constitute an unconstitutional invasion of the minor's right to privacy under the Ninth and Fourteenth Amendments?

3. Assuming any constitutional right of notification in parents prior to the dispensing of prescriptive and non-prescriptive contraceptives to minors, is there a compelling state interest in averting the devastating consequences of unwanted pregnancy in sexually active minors justifying the county (state's) policy of non-notification.

STATEMENT OF THE CASE

The Tri-County Family Planning Center is operated in Lansing, Michigan by the Ingham County Health Department under contract with the Michigan Department of Public Health. The Clinic serves minors as well as adults and does distribute to minors, after a thorough medical examination consistent with good medical practice (Stip. 12, 425 F. Supp. at 1202), non-prescriptive and prescriptive contraceptive devices or medications to minors with or without parental consent or consultation.

Although most facts concerning the operation of the Clinic were stipulated or undisputed, the Petitioners' presentation of those facts in their statement of the case is inaccurate and misleading.[1] Not all minors are served by

[1] A thorough and accurate summary of the material facts is completely set forth in the Opinion of the Court of Appeals. 615 F. 2d at 1163 to 1165.

the Clinic. The minimal age, by definition, is the age of menarche. Minors are refused service for medical reasons (R. 118, 119; A. 4). For 1974, the record disclosed that 623 females served were 17 years old, 466 were 16, 210 were 15, 74 were 14, 19 were 13. 89% had intercourse at least once prior to visiting the Clinic, and 10% of the minors had been pregnant at least once. (Stip. 18 & 19, 425 F. Supp. at 1202) A determination of the minor's understanding of contraceptives use and risks is made prior to dispensing (R. 155, 156, 157, A. 7, 8, 9).

The Clinic does require every minor to attend the "rap session". The rap session is educational in nature and designed to insure the minor demonstrates the knowledge and understanding of contraceptives use and drawbacks prior to dispensing of same. Parental attitudes are discussed, however, there is no statement in the record supporting Petitioners' position that religious beliefs are discussed. The references of Petitioners to their appendixes pages 18a, 19a and 21a support the thoroughness of the explanation process that is undertaken, but do not support the Petitioners' characterization of those sessions.

The Clinic does encourage the minors to involve parental participation (R. 93, 96, 98, 99, 117; A. 1, 2, 3, 4). Petitioners' representations to the contrary are incorrect on the record. The Clinic does not notify parents that their minor sexually active children are voluntarily seeking contraceptive devices, contrary to the wishes of the minors.

It is stipulated that the procedure for the distribution of contraceptives to minors constitutes good medical practice (Stip. 12, 428 F. Supp. 1202). It is further undisputed in the record that those persons receiving medical treatment generally obtain better medical care then would be available elsewhere (R. 152, 153). The nurse does not prescribe the contraceptives and the record does not so state. Although physicians do not see every patient, physi-

cians prescribe contraceptive devices which are dispensed by nurses pursuant to physician orders.[2] (R. 130)

The Clinic distributes both prescriptive and non-prescriptive contraceptive devices. The District Court enjoined distribution of all contraceptive devices to minors without parental notification. The Court of Appeals found no constitutional right in parents to notification and according reversed.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE DECISION OF THE COURT OF APPEALS FINDING NO CONSTITUTIONAL REQUIREMENT FOR PARENTAL NOTIFICATION PRIOR TO THE DISPENSING OF CONTRACEPTIVES TO MINORS VOLUNTARILY SEEKING SAME IS CONSISTENT WITH AND SUPPORTED BY THE DECISIONS OF THIS COURT WITH RESPECT TO FAMILY RIGHTS.

Petitioners' claim is grounded upon an assertion that parents have an independent constitutional right to be notified prior to the dispensing by the county (state) of any prescriptive and/or non-prescriptive contraceptive devices to sexually active minors voluntarily seeking protection from the devastating consequences of an unwanted pregnancy. The Petitioners cite the First, Ninth, and Fourteenth Amendments as support for their position and ground their claim in the decisions of this Court in *Meyer, infra, Pierce, infra, Prince, infra,* and *Yoder, infra.* The insufficiency of the parents position was succinctly

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[2]In any event, in Michigan it is legal and accepted medical practice for physicians assistants and licensed professional nurses to prescribe medications pursuant to physician supervison and direction. Op. Atty. Gen., No. 5360 (Jan. 22, 1980)

pointed out by the Court of Appeals as follows:

> "There is one fundamental difference between all the cited cases and the present one. In each of the Supreme Court cases the State was either requiring or prohibiting some activity." (615 F.2d at 1168)

The Court of Appeals went on to note that those cases were inapplicable because:

> "The State of Michigan, acting through the center and defendants, has imposed no compulsory requirements or prohibitions which affect rights of the plaintiffs." (615 F.2d at 1168)

To have a violation of the Free Exercise Clause of the First Amendment, there must be a showing of direct restraint or coercion upon the person who is asserting the right of free exercise. *Abington School District* v. *Schempp,* 374 U.S. 204 (1963). To have a violation of the Establishment Clause of the First Amendment, there must be affirmative action giving aid or preference to a particular religious group. *Meek* v. *Pittinger,* 421 U.S. 349 (1974). Neither situation exists in the instant case. It is not disputed that the Clinic is a voluntary clinic and that sexuallly active minors are not required or compelled to come to the Clinic and obtain contraceptives. The sexually active minors are even encouraged to communicate and involve their parents without being required to do so (R. 93, 96, 97, 98, 117; A. 1, 2, 3, 4). Thus, the present case is in opposite to the cases cited by Petitioners as a basis for granting certiorari.

Specifically, *Meyer* v. *Nebraska,* 262 U.S. 390 (1923) involved a state prohibition of the teaching of foreign languages to pupils who had not passed the eighth grade. *Pierce* v. *Society of Sisters,* 368 U.S. 510 (1025) addressed a statute requiring all children between the ages of 8 and 16 to attend public schools. *Wisconsin* v. *Yoder,* 406 U.S.

205 (1972) addressed the statute requiring compulsory school attendance beyond the eighth grade to age 16. *Prince* v. *Massachusetts,* 321 U.S. 158 (1944) addressed the child labor law construed to prohibit street sales or religious tracks to children. Each of those cases dealt with a specific blanket requirement or blanket prohibition for all minors within the particular State that had enacted the challenged legislation. Here there is nothing compulsory or mandatory about the Clinic. It is not a mandatory class or classes in school, nor a prohibition against certain educational processes. It is simply and solely a voluntary clinic to aid sexually active individuals, including minors, who desire to avoid the devastating consequences of an unwanted pregnancy.[3]

The activities of the Clinic are voluntary. There is no compulsion involved, nor is sexual behavior or family planning so steeped with religious implications as to be inseparable from religion or limited almost solely to religious use. *Civic Awareness of America* v. *Richardson,* 343 F. Supp. 1358, affirmed per curiam by the U.S. Court of Appeals for the Seventh Circuit on March 9, 1976 in an unpublished opinion. The Court of Appeals, in the present case, correctly rejected Petitioners' claims grounded in the First and Fourteenth Amendment. In fact the District Court impliedly rejected Petitioners claims grounded on

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[3] "The girl who has an illegitimate child at the age of 16 suddenly has 90 percent of her life's script written for her. She will probably drop out of school, even if someone else in her family helps to take care of the baby; she will probably not be able to find a steady job that pays enough to provide for herself and her child; she may feel impelled to marry someone she might not otherwise have chosen. Her life choices are few, and most of them are bad. Had she been able to delay the first child, her prospects might have been quite different . . ."

A. Campbell, *The Role of Family Planning in the Reduction of Poverty,* Journal of Marriage and the Family, Vol. 30, p. 236-245 (1968); quoted at p. 335 in J. A. Menken, *Teenage Childbearing: Its Medical Aspects and Implications for the United States Population,* Research Reports, Vol. 1. Demographic and Social Aspects, Coms'n on Population Growth and the American Future, p. 332-353, (Westoff & Parke eds., 1972).

these Amendments finding only (in its second opinion):

> ". . . the religious beliefs of the plaintiffs are implicated by the actions challenged here." 441 F. Supp. at 1251

Implicitly recognizing the weakness of their constitutional position, Petitioners present two "practical" arguments as to why this case should be taken, neither of which is constitutional in nature. The first argument is that the Clinic requires the minors to attend a "rap session". The rap session is an educational and information session prior to the dispensing of contraceptives. The parents characterize this "rap session" as "repetitious state subversion of their young children" at page 7 of their Petition. The parents then conclude that because the rap session may involve a discussion of beliefs contrary to those of Petitioners, that that session thereby violates the parents constitutional rights under the Ninth and Fourteenth Amendments in the upbringing of their children, and therefore the dispensing of the contraceptives without parental notice should be prohibited.

First, the rap session is not as characterized by Petitioners, but is as characterized by the Court of Appeals as follows:

> "The rap sessions are educational. They deal with birth control methods, the responsibilities of being sexually active and the desirability of communicating with parents and others involved in a decision to engage in sexual activities." (615, F.2d at 1163)

The record fully supports the Court of Appeals summary of the rap session. Petitioners characterization of the record with respect to the rap session as a basis for its request for the Writ of Certiorari is inaccurate and incorrect. The rap session as reflected by the record does not

provide any support for the assertion that this Court's decision in *Meyer, Pierce, Prince* and *Yoder* have suffered "emasculation".

Second, although denying the Petitioners characterization of the "rap session" that issue is not before this Court nor does it provide a basis for granting a Writ of Certiorari. The District Court, in both opinions supporting Petitioners, found no violation of any constitutional right of the Petitioners by the "rap session" and did not enjoin those sessions. The District Court only enjoined the dispensing of prescriptive and non-prescriptive contraceptives without parental notification. The Petitioners did not cross appeal and the issue of the "rap session" was not before the Sixth Circuit, and does not provide a basis for granting the Writ. The issue is the dispensing of any contraceptives to sexually active minors without parental notification. Simply put, if the county would immediately discontinue the informational "rap session" and continue to dispense contraceptives to minors without parental notification, the Constitutional issues considered by the District Court and the Court of Appeals would remain exactly the same.

The second reason urged for granting the Writ is the fact that the Clinic dispenses prescriptive, as well as non-prescriptive, contraceptives to sexually active minors. Petitioners characterize those drugs as "dangerous" prescriptive drugs, and a prize for attendance at the rap session. Page 10 of Petitioners' application. What is conveniently ignored by Petitioners is the fact that sexually active minors have already voluntarily come to the Clinic to obtain contraceptives. The existence or non-existence of the rap session does not change that fact.

Further, Petitioners' characterization of prescriptive contraceptives is inaccurate. Such side effects and contraindications that do not exist for the drugs are lowest for

minors. (R. 577, 578) Second, by definition, all prescriptive drugs involve contraindications and potential side effects, that is why they are prescriptive drugs to be dispensed pursuant to medical considerations, which the Clinic does consistent with good medical practice. The Clinic gives a thorough and complete physical examination (A. 2, 3, 4, 5, 6, 7). Furthermore, only a three-month supply is given and the recipient must return for an evaluation prior to the prescription of another supply (R. 131, 132; A. 6, 7). The potential side effects are thoroughly explained prior to using the prescription (R. 110, 112, 113, 126, 127, 128, 130, 131, 132; A. 2, 3, 4, 5, 6, 7). A determination that the minor does understand the nature and consequences of requesting and taking prescriptive contraceptives is made. (R. 155, 156, 157, A. 7, 8, 9). The parents' position, impliedly set forth in the Petition, is that the Writ should be granted because they are better able to make the medical judgments involved. That is incorrect and unsupportive of the request for the Writ. In short, the record as a whole totally supports the undisputed fact that the County's practice is consistent with good medical practice and does not support Petitioners' characterization of prescriptive contraceptives as a basis for granting the Writ.[4]

Petitioners' "scare tactics" in an attempt to obtain the

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[4] By contrast, the risks involved with teenage pregnancy are substantial: "The hazards to teenagers as a result of pregnancies are many, including an incidence of infant mortality two to three times higher, an incidence of growth-retarded newborn babies twice as high, a maternal mortality rate 60 percent higher, and an incidence of anemias and toxemias approximately 30 percent greater. Moreover, fewer teenagers get prenatal care, especially early in their pregnancy (70 percent get none in the first trimester). Besides the health risks, data show that the high school dropout rate among pregnant girls is twice that among nonpregnant females and that the risk of being unemployed or welfare dependent is greater, as is the likelihood of financial poverty per family. In addition, it can be anticipated that the number of children in the eventual families of a female who has a teenage pregnancy would be 30 percent greater."

Tyrer and Josimovich, *"Contraception and Teenagers", Clinical Obstetrics and Gynecology,* Vol. 20, No. 3, September, 1977 at 653.

Writ of Certiorari do not support their own legal argument. If there is a blanket *constitutional right* to notification of parents prior to the dispensing of all contraceptive devices to minors, and if this right of notice does not invade the minor's constitutional right of privacy in decisions affecting procreation, and if the state has not shown a compelling state interest for non-notification, the fact that one is dealing with prescriptive or non-prescriptive contraceptives as a factual matter is irrelevant. Conversely, if there is *no constitutional right* in parents to notice before the dispensing of contraceptives to sexually active minors, then the fact that some of the contraceptives are prescriptive contraceptives does not thereby create a constitutional right where none otherwise existed.

Petitioners' attempt to manufacture a constitutional right to a blanket notification requirement prior to the dispensing of all prescriptive and non-prescriptive contraceptive devices is based upon their characterization of the "rap session" and their characterization of the birth control pill. Neither characterization is accurate on the record. Neither supports their position as a basis for granting the Writ. The Clinic is voluntary. Parental involvement is encouraged, but not mandated. Petitioners have not shown, because in fact there is not, any inconsistency between the Court of Appeal's decision and the decisions of this Court in *Meyer, supra, Pierce, supra, Prince, supra* and *Yoder, supra.* Petitioners' first asserted reason for granting the Writ is unsupported, and the Writ should not be granted on that basis.

II. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH THE DECISIONS OF THIS COURT WITH RESPECT TO THE RIGHT OF PRIVACY IN AREAS AFFECTING PROCREATION.

Although the decision of the Court of Appeals, finding no constitutional right in parents to notification, made unnecessary a holding grounded in the constitutional right of privacy in the area of procreation, that decision is also consistent with the cases from this Court reaffirming the right of privacy in women's decisions concerning childbearing.

The constitutional right to privacy in decisions affecting procreation, including the alternative of abortion, has clearly been established this Court to be beyond the purview of state statutes which interfere in this intimate area of personal privacy. *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1977); *Roe* v. *Wade,* 410 U.S. 113 (1973); *Planned Parenthood of Missouri* v. *Danforth,* 428 U.S. 52 (1976); *Bellotti* v. *Baird,* 428 U.S. 132 (1976) (Bellotti I); *Carey* v. *Population Services International,* 431 U.S. 678 (1977) and *Bellotti* v. *Baird,* 443 U.S. 677 (1979) *(Bellotti II).*

Likewise, minors' constitutional right of privacy in decisions affecting procreation have been affirmed by this Court and impermissible state interference has been struck down. This Court's decisions with respect to the abortion alternative, as well as with respect to the decision to use contraceptives to avoid the devastating consequences of an unwanted pregnancy emphasizes the constitutional rights of minors and acknowledge the substantially greater problem presented to minors by an unplanned pregnancy. In this sensitive area, a state action which affectively imposes any sort of potentially blanket restriction has been struck down by this Court. *Bellotti II, supra, Planned Parenthood of Missouri* v. *Danforth, supra, Carey* v. *Population Services, supra, T. H.* v. *Jones,* 425 F. Supp. 873 (D. Utah, 1975) aff'd. in part 425 U.S. 986 (1976).

The only apparent area of disagreement exhibited by the separate opinions of this Court with respect to the

rights of minors in decisions affecting procreation is the extent to which the state may, to protect the state's legitimate independent interest in the well-being of its youth, impose requirements to the obtaining of abortions or contraceptives not imposed upon adults. That issue is not presented in this case. Michigan's interest in protecting minor females from the physical and emotional hazards of unwanted pregnancies resulted in this Clinic being established and dispensing contraceptives without parental notification. This is a legitimate state interest and policy. The policy of non-notification adopted by this Clinic is within the range of discretion afforded states, under the analysis of each of the various separate opinions in *Bellotti II, supra* and *Carey* v. *Population Services International, supra.*[5]

The decisions of this Court have recognized the rights of minors, with separate opinions issued as to the extent a state may, with respect to the state's interesst in the well-being of its minors, place a not undue burden on that right. The state here is not being challenged for imposing a burden. Here it is parents attempting to create a constitutional right of notice with the goal of substantially burdening the right to privacy of sexually active minors, thereby increasing the risks of an unwanted pregnancy, and, additionally, substantially burdening the attempt of the County and State to address this health problem. The decision of the Court of Appeals, or this Court, should this case be taken, supporting the decision of the Court of Appeals would not eliminate the litigation concerning the area of discretion open to the state to regulate minors' access to contraceptives. Likewise, a decision supportive of Petitioners could only serve as a stimulus to substantial further

[5]The chilling effect of a blanket notification requirement, besides infringing on the minor's right of privacy in decisions affecting procreation, would pose a substantial burden on the county's (state's) attempt to successfully address this pressing health problem. (R. 428, 429, 508, 509, 632)

litigation by or against states in an attempt to define their duties, or litigation instituted by minors to clarify their right to privacy. The "carrot" held out by Petitioners that by taking this case, the Court can put to rest the substantial range of litigation with respect to regulations affecting decisions in the area of procreation is simply not true.[6]

It is true, as pointed out by Petitioners, that there have been numerous decisions by this Court in the area of the right to privacy on decisions affecting procreation. It is equally true, as also pointed out, that there have been many articles on the subject. However, the articles cited do not represent "consternation and confusion" so much as they represent support for or criticism of the decisions of this Court. The fact that the problems of sexual activity in minors provides a fertile ground for articles on the subject does not thereby provide a reason for granting the Writ.

The decision below, finding *no* parental *constitutional right* to a blanket notification prior to the dispensing of prescriptive and non-prescriptive contraceptives to sexually active minors, is consistent with the numerous decisions of this Court with respect to a minor's right to privacy and the permissible area of state regulation. For this reason, also, the Petition for a Writ of Certiorari should be denied.

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[6]The similarity asserted by Petitioners of this case to *H._____ L. _____* v. *Matheson*, 604 P. 2d 907 (1979) (Utah Sup. Ct.), review granted 100 S. Ct. 1077 (1980) is not present. Here the Petitioners are asserting a constitutional right to notification. The issue in that case is the range of permissible state regulation, without infringing a minor's right of privacy, with a criminal penalty provided to the physician found in non-complicance with the statute in question.

CONCLUSION

For all the foregoing reasons, it is respectfully requested that the Court should deny the Petition.

Respectfully submitted,
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APPENDIX

APPENDIX

Deposition of Marianne Davis, Program Administrator of the Ingham (Tri-County, Michigan) Family Planning Center, taken November 4, 1975 and appearing in the record below of this matter at pages 84 to 141. Excerpts thereof follow:

At page 93 of the Record the witness testified:

(By Plaintiff's counsel, Mr. McCormick):

"Q. Do you have many instances of a parent coming in with a minor to inquire?

A. Yes.

Q. - or to obtain the services?

A. Parents sometimes come with their daughters, um-hum."

(Page 96, Record)

"Q. And you don't particularly encourage, let's say, woman in their 20's who might come into the clinic to attend the rap session?

A. No. We would encourage a parent to come and attend.

Q. Any interest parent, you would encourage to come to the rap sesion, but you wouldn't encourage, let's say a 23 year old -

A. No. I wouldn't encourage, no."

(Page 97, 98, Record)

"Q. And do you have some parents who attend the rap sessions?

A. Occasionally. We have many parents at times who call and inquire so that they can send their child. And occasionally parents accompany."

(Page 99, Record)

"Q. In the rap session or when your people talk to these teenagers, do you initiate any discussion regarding parental attitude, regarding their parents' attitudes towards either contraception or their being sexually active?

A. That's one of the major topics, is discussing those kinds of things, talking about communications with parents. If the people at the rap session are having difficulty talking to their parents, the social worker would offer to help them in any way she could, including going to their home with the student and talking to them."

(Page 110, Record)

"Q. And at the rap sessions, is there any explanation given as to what the various forms of contraception are?

A. Yes.

Q. And their pros and cons?

A. Yes.

Q. From a medical point of view?

A. Yes.

Q. To a point of view of success rate?

A. Yes.

Q. And at some point in time, are individuals who are interested in being put on the pill or an IUD or any other form of birth control told of the possible side effects or possible medical problems that might arise in connection with the use of a particular method of birth control?

A. Yes. And the literature includes that, too, I believe.

Q. I see. Now, do you assume that they all read the literature?

A. No. That's the reason it's given verbally, also.

Q. Is this done at the rap session or when an individual comes in after an appointment to actually receive a prescription or whatever?

A. Both, really."

(Page 112, Record)

"Q. Are they asked or are they told about the blood clot phenomenon and the phlebitis phenomenon as the possible complications of use of the pill?

A. Well, I think these kinds of things are discussed in the rap session and again - see one of the questions - well, these kinds of things are covered by these different interviewers along the way."

(Page 113, Record)

A. I'm trying to get back to your question about when they could come back. And they are given at the most three month's worth of birth control pills. So at the end of three months, they come back if they want more birth control pills. If they don't want to come back, that's their decision too. And at that time we check them again and ask them a whole list of questions about possible symptoms that might have occurred as the result of taking two or three month's birth control pills. And their blood pressure and urine and blood are checked at that time."

(Page 117, Record)

"Q. In the course of these discussions, does the social worker then have to deal with the question of those teenagers who, from their family background, have scruples about being sexualy active, that are thinking about it or involved in it and are looking for some counsel as to how to resolve these problems? Do you deal with that kind of situation?

A. Yes. We would be available for any student to come and talk about this to try to work out some way of opening up communications with their parents and with any other person that might help them work out some communications with their parents. Sometimes that could be a brother or a sister, an older brother or sister or a minister or somebody like that."

(Page 118, 119 Record)

"Q. Are any individuals turned down; that is, told that you will not provide them - the clinic will not provide them with contraceptive devices or medication?

A. Yes.

Q. For what reasons?

A. For medical reasons."

(Page 126, Record)

"A. . . . The physical sheet is in there, and so all that kind of paper work information is taken care of. Her blood pressure is taken, a urinalysis is made, a hemotocrit test is made on her. She talks to a nurse or para-professional screening person about the information on the sheet that she has filled out to elaborate on any point that needs to be

emphasized and highlighted so that either the social worker, the nutritionist, or the doctor would pick up on the point and get some further information."

(Page 127, Record)

"A. The form we use is in addition to this form, [the State Department of Public Health Form], but it has much of the same kind of information on it as this. But it has more elaborate kinds of questions, goes into much more detail than that, and is a questionnaire about - the medical history one has the medical history of the patient and the medical history of the patient's mother and father and possibly any other close relative might be questioned, also."

(Page 128, Record)

"A. After the form is filled out, the patient talks to a screening interviewer. And they go over every form to make sure they're filled out and that we have adequate information or that we follow up on any information that might be - if the patient says she has, is a diabetic or then she might be asked what kind of medication are you on and go into that a little bit. Or if the screening interviewer takes her blood pressure and she has high blood pressure, she might inquire about other members of the family who have high blood pressure, varicose veins, headaches, all kinds of things like that we're looking for to see if that's in the medical history of the patient or her mother or father. So that interview would take care of in more detailed information or look at their medical history. Then to evaluate with the patient whether she would like to talk to the social worker or the nutritionist. She might be anemic and might not have known it. So we would maybe have her talk to the nutritionist about that.

Then notes would be written about those things."

(Page 130, Record)

"A. After they've talked to the social worker, the nutritionist, they are seen next by the doctor, who looks over all the records that have been compiled on the patient up to that point. And so then he also has an opportunity to talk to each patient and to go into any detail on any aspect of the records and the person that he wants to follow up on. And the examination is performed, and he prescribes some kind of birth control pill. There are several different strength. And the patient after that is seen by a nurse, who goes over the information about how to take the pill, what kind of physical changes to be aware of that could happen, and emphasizes calling our clinic if the patient has any questions or concerns about her physical well-being. The patient has another chance, as she has had all through the clinic, to ask any questions that she might have about anything connected with birth control or herself or her medical record. And so this nurse at the end of the whole line of people is a person who is trying to make sure that everything has been covered, that she understands, and that she knows what to do next."

(Page 131, 132, Record)

"A. I can't think of - well, we touched, on it, that a patient is given one, two, or three month's pills, and that's the judgment of the doctor. And at the end of that time, they are to come back if they want more pills. So we perform another set of tests on them at that time, and they are questioned very closely about their medical history during that interval. So that there is a constant kind of checkup, follow-up on her.

Q. If the girl doesn't come back, let's say - is the IUD the only form of birth control where you more or less insist the girl come back to the clinic?

A. Whether people come to our clinic or not is their choice. And it's advisable that they come, because it's advisable that women be checked periodically. We have Pap smears and so on, the whole picture there. But it's there choice whether they want to come back or not. We encourage them in every way, because we are to be monitoring their health in this area, and we can't unless they do come back."

Deposition of Gerald Holzman, M.D. Member of Michigan State University, Department acting as Medical Director of the Ingham (Tri-County Michigan) Family Planning Center, taken on November 4, 1975 and appearing in the Record of this matter below at pages 143 to 177.

(Page 155, 156, Record)

By Plaintiff's Counsel:

"Q. Now, do you make any kind of an evaluation of the level of understanding or maturity of the girl or woman who is there?

A. I'm not involved in that.

Q. Does the physician routinely do that?

A. Does the clinic?

Q. No. I am talking specifically about the role of the physician -

A. We've already established that, that the physician does not see every patient, so the obvious answer to that question is no. Does clinic personnel; yes, very definitely.

Q. Do you know - well, what do they do? What steps do they take to ascertain the maturity level of the girl?

A. I'm sorry, I misunderstood your question then, because I thought you said understanding.

Q. Okay. Her understanding of the procedures and her level of maturity, which I think are related.

A. There are multiple occasions when procedures, both - well, we're talking about several things at once. It's rather difficult. If we talk about the pill, we talk when you take the pill, et cetera, how it works, et cetera. That occurs at the teen rap. That occurs with the counselor. That occurs once a prescription is given. Those are not one way conversations or lectures, but they're dialogue. So if there is any perception by the person talking to that individual that they don't understand, I am talking now only about understanding, that person would be I believe, referred first to a social worker or counselor."

(Page 157, Record)

"Q. Is any kind of a test given to the girls to determine if they understood the medical information that's been given to them and the social information with respect, for example, to contraindications with respect to the possible complications inherent in certain forms of birth control?

A. Are you talking about a conversation and an ascertainment of a person's understanding, or are you talking about a paper and pencil -

Q. Paper and pencil.

A. Again, I don't know - no, there is no testing for any one at any age.

Q. Okay. You've got no paper and pencil. Are they questioned at all?

A. Yes.

Q. And who would do that?

A. The people involved as I've just stated.

Q. This would be at the rap sessions?

A. I'm saying at the rap sessions and on down the line."